

## **IC 5-1-5**

### **Chapter 5. Refunding Bonds Generally**

#### **IC 5-1-5-1**

##### **Definitions**

Sec. 1. The following terms as used in this chapter have the following meanings:

(a) "Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, or other legislative body in which the legislative powers of the issuing body are vested.

(b) "Issuing body" means the state of Indiana, its agencies, commissions, universities, colleges, institutions, political subdivisions, counties, school corporations, hospital associations, municipal and quasi-municipal corporations, special taxing districts, and any corporation which has issued bonds payable directly or indirectly from lease rentals payable by any of the foregoing issuing bodies, now or hereafter existing under the laws of the state of Indiana.

(c) "Bond" means any revenue bond, general obligation bond, or advance refunding bond.

(d) "Revenue bond" means any bond note, warrant, certificate of indebtedness, or other obligation, including a certificate or other evidence of participation in the lessor's interest in and rights under a lease, for the payment of money issued by an issuing body or any predecessor of any issuing body which is payable from designated revenues, rental payments, special benefits, taxes or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional debt limitation and any obligation payable solely from special assessments or special assessments and a guaranty fund.

(e) "General obligation bond" means any bond, note, warrant, certificate of indebtedness or other obligation of an issuing body which constitutes an indebtedness within the meaning of the constitutional debt limitation.

(f) "Advance refunding bonds" means bonds issued for the purpose of refunding bonds first subject to redemption or maturing after the date of the advance refunding boards.

(g) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the issuing body exercising any power hereunder takes formal action and adopts legislative provisions and matters of some permanency.

(h) "Corporation which has issued bonds" means a corporation organized under IC 1971, 21-5, the laws of any state of the United States of America or of the United States of America, including any bank, trust company, or national association serving as a trustee under an indenture providing for issuance of bonds.

(i) Words used herein importing singular or plural number may be construed so that one (1) number includes both.

*(Formerly: Acts 1973, P.L.28, SEC.1; Acts 1975, P.L.36, SEC.1.)*

### **IC 5-1-5-2**

#### **Issuance of bonds to refund outstanding bonds**

Sec. 2. (a) The governing body of any issuing body may by ordinance provide for the issuance of bonds to refund outstanding bonds issued at any time by such issuing body or its predecessor, and to pay redemption premiums and costs of refunding to effect a saving to the issuing body. Issuance of bonds to refund outstanding bonds may also be made in order to pay or discharge all or any part of such outstanding series or issue of bond, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available or to modify restrictive covenants in outstanding bonds impeding additional financing. To determine whether or not a savings will be effected, consideration shall be given to the estimated or known interest payable to the fixed maturities of the refunding bonds, the interest payable on the bonds to be refunded, the costs of issuance of the refunding bonds, including any sale discount, the redemption premiums, if any, to be paid, and the probable earned income from the investment of the refunding bond proceeds pending redemption of the bonds to be refunded.

(b) The provisions of subsection (a) requiring a savings to be effected do not apply to the issuance of bonds to refund previously issued refunding bonds, if the statute under which the refunding bonds are issued expressly exempts such an issue from this savings requirement.

*(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1982, P.L.28, SEC.2; P.L.23-1984, SEC.1.*

### **IC 5-1-5-3**

#### **Exchange for outstanding bonds**

Sec. 3. Any bonds issued for refunding purposes may be delivered in exchange for the outstanding bonds being refunded or may be sold in the manner hereinafter provided.

*(Formerly: Acts 1973, P.L.28, SEC.1.)*

### **IC 5-1-5-4**

#### **Refunding procedure**

Sec. 4. (a) Bonds may be refunded under this chapter when the holders thereof voluntarily surrender them for exchange or payment, or, if they mature, or are subject to redemption prior to maturity within twenty (20) years from the date of the refunding bonds. In any advance refunding plan under this chapter the governing body shall provide in the ordinance authorizing the issuance of the advance refunding bonds for the redemption of the bonds to be refunded on any redemption date prior to maturity or at maturity.

(b) The ordinance authorizing the issuance of advance refunding bonds pursuant to this chapter may provide for a maximum interest rate, payable annually or at shorter intervals, and shall provide for the maturities at such time or times as may be determined by the ordinance. The bonds may be made redeemable before maturity at the option of the issuing body at such times and with such premiums,

and under such terms and conditions as may be fixed in the ordinance.

(c) The principal and interest of the bonds may be made payable in any lawful medium. The ordinance shall determine the form of the bonds, including the interest coupons if any to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest thereof, which may be at any bank or trust company within or without the state.

(d) Subject to registration provisions, all such bonds shall have all the qualities and the incidents of negotiable instruments under the negotiable instruments law of the state. The bonds shall be exempt from all taxation, state, county, and municipal, as provided in IC 6-8-5. Provision may be made for the registration of any of the bonds in the name of the owner as to principal alone, or as to both principal and interest, but fully registered bonds shall be made convertible to coupon bonds at the option of the registered owner. The bonds shall be executed in the same manner as other bonds issued by the issuing body are executed.

*(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by P.L.23-1984, SEC.2.*

#### **IC 5-1-5-5**

##### **Principal amount; reserves to secure bonds**

Sec. 5. Refunding bonds may be issued in a principal amount in excess of the principal amount of the bonds to be refunded. The principal amount of the refunding bonds may be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the retirement or redemption of such bonds to be refunded. Any reserves held to secure the bonds to be refunded may be applied at the time the bonds to be refunded are paid to the redemption or retirement of such bonds, or if other available funds are sufficient and are used to retire and redeem such bonds, such reserves may be pledged as security for the refunding bonds.

*(Formerly: Acts 1973, P.L.28, SEC.1.)*

#### **IC 5-1-5-6**

##### **Proceeds of refunding bonds; disposition**

Sec. 6. The proceeds of the refunding bonds issued pursuant to this chapter shall be placed in escrow and applied, with any other available funds, to the payment on the date selected for redemption of the principal, accrued interest and any redemption premiums of the bonds being refunded, and, if so provided or permitted in the ordinance authorizing the issuance of such refunding bonds or in the trust indenture securing the same, may also be applied to the payment of any interest on such refunding bonds, and any costs of refunding. Pending such application, such escrowed proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United

States of America, which shall mature, or which shall be subject to redemption by the holder thereof at the option of such holder, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended. In lieu of such investments, all or part of such proceeds may be placed in interest bearing time certificates of deposits with such eligible financial institutions in the state of Indiana as the governing body shall determine or other similar arrangements may be made with such eligible financial institutions with regard thereto which will assure that such proceeds, together with the interest accruing thereon, will be available when required for the purposes intended, provided that prior written approval of the Director of the Department of Financial Institutions shall be required whenever such time certificates of deposits or other similar arrangements shall be secured to the full amount thereof by direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by, the United States of America of the type permitted for direct investment of the escrow fund. All interest or other income earned on such investments shall first be used to pay the interest on the refunding bonds as it becomes due. Any excess shall become a part of and held in the escrow fund. Any balance remaining in the escrow fund after redemption of all the bonds being refunded shall be deposited in the sinking fund after redemption of all the bonds being refunded shall be deposited in the sinking fund established for the payment of the principal and interest on the refunding bonds.

*(Formerly: Acts 1973, P.L.28, SEC.1; Acts 1974, P.L.12, SEC.1.)*

#### **IC 5-1-5-7**

##### **Safekeeping and application of bond proceeds**

Sec. 7. The governing body may contract with respect to the safekeeping and application of the advance refunding bond proceeds and other funds included therewith and the income therefrom. The governing body may provide in the refunding plan that until such moneys are required to redeem or retire revenue bonds to be refunded, the refunding bond proceeds and other available funds, and the income therefrom shall be used to pay and secure the payment of the principal of and interest on the advance refunding bonds. The governing body may additionally pledge for the payment of such refunding bonds any revenues which might legally be pledged for the payment of revenue bonds of the issuer of the type being refunded. Provisions must be made by the governing body for moneys sufficient in amount to accomplish the refunding as scheduled.

*(Formerly: Acts 1973, P.L.28, SEC.1.)*

#### **IC 5-1-5-8**

##### **Trust indenture to secure bonds**

Sec. 8. (a) The governing body may secure the bonds by a trust indenture by and between the issuing body and a corporate trustee, which may be any trust company or bank having the powers of a trust

company within or outside of the state of Indiana, and may convey or mortgage property to the same extent as is authorized by statutes applicable to:

- (1) the bonds being refunded; or
- (2) the bonds that the bonds being refunded had previously refunded.

(b) The ordinance authorizing the bonds and fixing the details thereof may provide that the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the issuing body.

(c) The trust indenture may set forth the rights and remedies of the bondholders or trustee, restricting the individual right of action of bondholders as is customary in trust indenture securing bonds and debentures of corporations. Except as is in this chapter otherwise provided, the governing body may provide by ordinance or in the trust indenture for any other terms or conditions pertaining to the refunding bonds as is authorized by statutes applicable to:

- (1) the bonds being refunded; or
- (2) the bonds that the bonds being refunded had previously refunded.

*(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1982, P.L.28, SEC.3.*

#### **IC 5-1-5-9**

##### **Payment of bonds; sources of revenue**

Sec. 9. When an issuing body has irrevocably set aside for and pledged to the payment of revenue bonds to be refunded, advance refunding bond proceeds and other moneys in amounts which together with known earned income from the investment thereof are sufficient in amount to pay the principal of and interest and any redemption premiums on such revenue bonds as the same become due and to accomplish the refunding as scheduled, the governing body may provide that the advance refunding revenue bonds shall be payable from any source which, either at the time of the issuance of the advance refunding bonds or the revenue bonds to be refunded, might legally be or have been pledged for the payment of the revenue bonds refunded to the extent it may legally do so, notwithstanding the pledge of such revenues for the payment of the outstanding revenue bonds being refunded.

*(Formerly: Acts 1973, P.L.28, SEC.1.)*

#### **IC 5-1-5-10**

##### **Irrevocable pledge to general obligation bond; effect**

Sec. 10. When funds and investments and the known earned income therefrom in amounts sufficient to pay the principal of and interest and any premium on bonds to be refunded as they become due at their respective maturities or at the date fixed for redemption have been irrevocably pledged to the bonds to be refunded, such bonds shall not constitute an indebtedness of the issuing body within

the meaning of any constitutional or statutory debt limitation.  
(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by P.L.44-1987, SEC.1.

#### **IC 5-1-5-11**

##### **Issuance; separate or in combination**

Sec. 11. Bonds for refunding and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one (1) or more series or issues by the same issuer.  
(Formerly: Acts 1973, P.L.28, SEC.1.)

#### **IC 5-1-5-12**

##### **Law governing issuance**

Sec. 12. Except as specifically provided in this chapter, refunding bonds issued under this chapter shall be issued in accordance with the provisions of law applicable, either at the time of the issuance of the refunding bonds or at the time of issuance of the bonds to be refunded, to:

- (1) the type of bonds being refunded; or
- (2) the type of bonds that the bonds being refunded had previously refunded.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1982, P.L.28, SEC.4.

#### **IC 5-1-5-13**

##### **Sale of bonds**

Sec. 13. Refunding bonds issued under the provisions of this chapter may be sold in such manner and upon such terms and conditions as the issuer of such refunding bonds shall deem to be in the best interests of the issuing body, notwithstanding the provisions of IC 4-1-5, nor the provisions of IC 5-1-11, nor the provisions of any other law to the contrary. However, if such refunding bonds are sold to any person, limited liability company, firm, or corporation that has been rendering financial advisory services to the issuing body in connection with the proceedings and necessary fiscal arrangements related to such refunding bonds, then and in that event the issuing body shall not pay to such purchaser of the refunding bonds any fee or compensation for services rendered or as reimbursement for expenses incurred in connection therewith.

(Formerly: Acts 1973, P.L.28, SEC.1.) As amended by Acts 1981, P.L.11, SEC.15; P.L.8-1993, SEC.45.

#### **IC 5-1-5-14**

##### **Cumulative effect of chapter**

Sec. 14. The authority of an issuing body to issue refunding bonds pursuant to this chapter is additional to any existing authority to issue such bonds and nothing in this chapter shall prevent the issuance of such bonds pursuant to any other law, and this chapter shall not be construed to amend any existing law authorizing the issuance of refunding bonds by an issuing body.

*(Formerly: Acts 1973, P.L.28, SEC.1.)*

#### **IC 5-1-5-15**

##### **Lease modifications**

Sec. 15. In connection with the issuance of refunding bonds, an issuing body and the lessee, or lessees, of any building, or buildings, financed from the proceeds of the bonds being refunded may enter into an amendment to the lease modifying or amending the provisions of such lease in any one (1) or more of the following respects:

(a) to provide for a reduction in the amount of lease rental payable by the lessee, or lessees, to be effective upon the redemption of the bonds being refunded; or the happening of the events set forth in section 9 of this chapter if permitted by law and the covenants on the bonds to be refunded;

(b) to provide for extensions or reductions of the times set forth in the lease before the options of the lessee or lessees to purchase may be exercised to such times as may be agreed upon between the issuing body and the lessee or lessees;

(c) to provide that the lease rental payable by the lessee or lessees, after the redemption of all the bonds being refunded may be payable to the trustee under a trust indenture securing such refunding bonds.

The refunding herein authorized shall in no way affect the obligation of the lessee or lessees to pay the lease rental under the lease of the building or buildings, except to the extent such lease rental may be reduced by any amendment as hereinbefore authorized.

*(Formerly: Acts 1973, P.L.28, SEC.1.)*

#### **IC 5-1-5-16**

##### **Advance refunding bonds; issuance**

Sec. 16. Notwithstanding any other law, advance refunding bonds may be issued by an issuing body without obtaining the approval of the utility regulatory commission whether such advance refunding bonds are issued under this chapter or any other law.

*As added by P.L.44-1987, SEC.2. Amended by P.L.23-1988, SEC.3.*